IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3479 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMPOSITE HOTELS LTD

Versus

UNION TERRITORIES OF DAMAN ANDDIU

Appearance:

MR MIHIR H JOSHI for Petitioners

(MR PB MAJMUDAR) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/12/2000

ORAL JUDGEMENT

Rule. Mr.M.R.Shah waives service of rule for the respondents. In this petition, under Article 226 of the Constitution, petitioner no.1 (hereinafter referred to as the "petitioner company" or "the company") and its director have challenged the notice dated 23.4.1999

calling upon the petitioner company to show cause why the power supply released to them should not be discontinued.

2. The Tourism Corporation of Gujarat Ltd. (TCGL) set up a beach resort at Ahmedpur-Mandvi called Samudra Beach Resort for running the hotel business and when the said resort was set up, the respondent - Collector of Diu had agreed to supply electricity. At the relevant time the respondents had agreed to supply electricity to Samudra Beach Resort as per the understanding arrived at between the Tourism Corporation and the respondent Administration. It appears that Tourism Corporation was not in a position to run the hotel business at the above complex and, therefore, it entered into lease agreement with the petitioner company. As per the statement made by the Learned Counsel for the petitioner company & under the lease agreement the petitioner company has to pay a sum of Rs.22 lacs and odd amount to the Tourism Corporation and also a percentage of the realisations. The petitioner company has some dispute with the Tourism Corporation regarding this lease rent but it is submitted that in any case lease agreement was entered into by the petitioner company in view of several factors including the fact that electricity was being supplied by the respondent administration at particular rate at which the respondent Administration is charging the Samudra Beach Resort since 1992.

On 23.4.99, the Collector, Diu sent the impugned notice to the petitioner company to show cause why the electricity should not be disconnected as the power supply was released to Samudra Beach belonging to the Gujarat Tourism as a special case and on the basis of NOC issued by the Gujarat Electricity Board since the area is under the jurisdiction of the Gujarat State; the allegation in the show cause notice is that the resort had been leased out to the petitioner company alongwith power supply without prior permission of the Electricity Department and, therefore, there is violation of 27 and 28 conditions for supply of electrical energy. It is this notice which is challenged in this petition.

3. While issuing the notice on 7.5.99, this Court had granted adinterim relief against disconnection of electricity to the premises of Samudra Beach Resort, Ahmedpur-Mandvi. The Court is informed that in view of the said adinterim injunction electrical supply is being continued by the respondents but the respondents have filed affidavits opposing the petition and have also filed an application for vacating the adinterim injunction.

4. At the hearing of this petition, the learned Counsel for the petitioner submits that the beach resort still belongs to the Tourism Corporation of Gujarat and the petitioner is merely a lessee for running the hotel. There is therefore no sale of the property in question. Even condition no.28, of which breach is alleged, refers to resale of electrical energy which the petitioner company is not doing. It is being supplied to only the customers who occupy the room in the Beach Resort which still belongs to the Tourism Corporation.

It is further submitted that the Gujarat Electricity Board letter dated 4.7.1999 from the Executive Engineer (O&M), Una to the Manager, Samudra Beach Resort also states that Gujarat Electricity Board is ready to supply power from 11Kv Diu rural feeder. But as it is rural feeder the Beach resort will get 10 supply during load Shadding period and 30 power supply during other time. It is, therefore, submitted that even now the Gujarat Electricity Board is not in a position to supply stable power. Therefore, the Gujarat Electricity Board cannot be permitted to back out from the NOC issued earlier on 25.2.1992.It is specifically stated that the responent administration should stop supplying power to the Samudra Beach Resort only when the G.E.B. is in a position to supply stable power.

5. On the other hand, Mr.M.R.Shah, learned Counsel for the respondents states that the impugned notice is merely a show cause notice and, therefore, the petition may not be entertained. Secondly, it is submitted that now that the G.E.B. is in a position to supply power to the Beach Resort, the petitioner has no right to insist that the Collector, Diu should supply electricity. Thirdly, it is submitted that there is vast difference in the tariff charged by the Collector, Diu on the one hand and the tariff which can be charged by G.E.B. Hence, the G.E.B is suffering loss.

6. Having heard the learned Counsel for the parties, while the Court does not express any final opinion in absence of the Tourism Corporation or the G.E.B., the Court would like to direct that the respondents shall take final decision after hearing the petitioner and after consulting the Tourism Corporation as well as the G.E.B. on all relevant aspects including the question whether the G.E.B. is in a position to supply stable power as was mentioned in the NOC dated 25.2.1992. If the petitioner company is in a position to satisfy the respondents that the power supply proposed to be given by

the G.E.B. will not be adequate or stable for the requirement of running the hotel business at the Beach Resort , the respondents shall also take the said fact into account before taking any final decision. It will also be open to the petitioner to contend that the electricity was earlier agreed to be supplied to the Hotel project of Samudra Beach Resort, Ahmedpur-Mandvi which still continues to belong to Tourism Corporation of Gujarat and that the power supply has nothing to do with the agency running the Beach Resort.

7. It appears that the impugned show cause notice dated 23.4.99 only refers to the alleged ground of transfer and does not at all refer to the other grounds which are now urged in the reply affidavit and at the time of hearing of this petition. The respondent Collector shall, therefore, consider whether he would withdraw the impugned show cause notice and issue a fresh show cause notice or issue an additional show cause notice containing all the grounds on which they propose to rely. At the time of supplying such additional show cause notice, the respondents shall also supply all the documents on which they propose to rely. Thereafter, the petitioner shall be given an opportunity of submitting its reply within one month from the date of receipt of the fresh or additional show cause notice and the documents on which the respondents propose to rely. Thereafter, the petitioner company shall be given an opportunity of personal hearing before the respondents at which hearing an officer of the G.E.B conversant with the power supply situation shall also be present who can assure whether the G.E.B. would be in a position to supply stable power. The petitioner shall also cooperate with the authorities for early hearing.

8. Till the respondents take the final decision, the respondents shall not disconnect electricity supply to the Beach Resort and in case the final decision is adverse to the petitioners, the respondents shall not disconnect the supply for a period of one month from the date of communication of the order to the petitioners by RPAD.

This petition is accordingly disposed of in the above directions. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S.Shah, J)
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